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No. 571

Office-Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

IN THE MATTER

of

The Application of the BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 3 OF THE TOWN OF OYSTER BAY, NASSAU COUNTY, and of JANE J. SERPE, GLORIA A. DUNAIF and IRIS E. LAVAC, Taxpayers of Union Free School District No. 3 of the Town of Oyster Bay, Nassau County,

Appellants,

for orders under Article 78 of the Civil Practice Act to review, vacate and set aside the determinations of JAMES E. ALLEN, JR., as Commissioner of Education of the State of New York,

Appellee,

(1) Laying out Central School District No. 3 of the Town of Oyster Bay, Nassau County, and (2) that an election shall be held for the purpose of organizing Central School District No. 3 of the Town of Oyster Bay, Nassau County, and vacating the notice of election signed by said Commissioner.

(CONSOLIDATED PROCEEDINGS)

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

JURISDICTIONAL STATEMENT.

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Appellants,

For orders under Article 78 of the Civil Practice Act to review, vacate and set aside the determinations of JAMES E. ALLEN, JR., as Commissioner of Education of the State of New York,

Appellee,

(1) Laying out Central School District No. 3 of the Town of Oyster Bay, Nassau County, and (2) that an election shall be held for the purpose of organizing Central School District No. 3 of the Town of Oyster Bay, Nassau County, and vacating the notice of election signed by said Commissioner.

(Consolidated Proceedings)

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

JURISDICTIONAL STATEMENT.

Appellants appeal from the final order of the Court of Appeals entered on May 29, 1959, affirming an order of the Supreme Court of the State of New York, Appellate

Division, Third Department dismissing the petitions herein, and from the final order of the Court of Appeals of the State of New York granted and entered July 8, 1959 insofar as that order denied appellants' motion for reargument of the appeal to that court, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

A. Opinions Below.

The majority of the Court of Appeals of the State of New York wrote no opinion. The dissenting opinion of Froessel, J. concurred in by Van Voorhis, J. is reported at 6 N. Y. 2d 871, 188 N. Y. S. 2d 988. A copy thereof is annexed hereto as Appendix A.

The opinion of the Supreme Court of the State of New York, Appellate Division, Third Department, is reported at 6 A. D. 2d 316, 177 N. Y. S. 2d 169. A copy thereof is annexed hereto as Appendix B.

The opinions of the Supreme Court of the State of New York, Albany County, Schirick, J. are not reported officially nor unofficially. Copies thereof are annexed hereto as Appendix C.

A copy of the order of the Court of Appeals affirming the Appellate Division is annexed hereto as Appendix D.

A copy of the order of the Court of Appeals denying appellant's motion for reargument but granting amendment of the *remittitur* is annexed hereto as Appendix E.

B. Basis for Jurisdiction.

1. Nature of Proceeding.

This consolidated proceeding was originally brought under Article 78 of the New York Civil Practice Act to review and set aside two separate determinations by the

Commissioner of Education of the State of New York: (A) Laying out Central School District No. 3 of the Town of Oyster Bay, Nassau County; and (B) directing that an election be held for the purpose of organizing said Central School District. These determinations had purportedly been made pursuant to New York Education Law, Sections 1801 and 1802 respectively. When the petitions came on to be heard at Supreme Court, Albany County, they were consolidated. On this appeal, however, petitioner urges only the issues raised in the first proceeding (the order laying out the Central School District); the issue in the second proceeding involved only the construction of a New York State statute.

2. Proceedings Below.

By order granted and entered November 23, 1957, Supreme Court, Albany County, dismissed the first petition and granted the relief sought in the second petition.

The Appellate Division, Third Department, in its order dated and entered May 19, 1958, modified the lower court by dismissing the second petition and, as so modified, affirmed.

By order dated and entered May 29, 1959 the Court of Appeals of the State of New York affirmed the Appellate Division, two judges dissenting in an opinion.

By order dated and entered July 8, 1959 the Court of Appeals denied appellants' motion for reargument, but granted their motion to amend the *remittitur* by including therein the following statement:

> "Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz.: Appellants contended that section 1801 of the Education Law was unconstitutional in that it deprived taxpayers of their property without due process of law in